Calendar No. 336

99TH CONGRESS
1st Session

SENATE

REPORT
99-147

FARM PRODUCTS PURCHASERS' PROTECTION ACT

OCTOBER 3 (legislative day, SEPTEMBER 30), 1985.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 744]

The Committee on Agriculture, Nutrition, and Forestry, to which was referred the bill (S. 744) to amend the Agriculture and Food Act of 1981 to provide protection for agricultural purchasers of farm products, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

SHORT SUMMARY

S. 744, as reported by the Committee on Agriculture, Nutrition, and Forestry, provides that a buyer who, in the ordinary course of business, buys farm products from a seller engaged in farming operations takes such products free of any security interest (lien) created by the seller, even though the security interest is perfected and the buyer knows of its existence.

However, a buyer of farm products in the ordinary course of business will take these products subject to a security interest created by the seller if—

(a) within 12 months prior to sale of the products, the buyer has received written notice of the security interest and any payment obligation imposed on the buyer as a condition for the release of the interest, and

(b) the buyer has failed to perform the buyer's obligation.

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Thus S. 744 provides for Federal preemption of the "farm products exception" contained in State commercial lien law. This State law is based, with certain minor exceptions, on the text of section 9-307 of the Uniform Commercial Code.

COMMITTEE AMENDMENTS

The Committee amendment to S. 744 strikes all after the enacting clause and inserts in lieu thereof an amendment in the nature of a substitute. The substitute is essentially the same as S. 744, as introduced, except that the amendment provides that security agreements may require an agricultural borrower pledging farm products as security for a loan to furnish a list of potential purchasers of the pledged products to the secured party and establishes procedures for compliance in the event pledged products are sold to an unlisted purchaser.

The Committee amendment to the title of the bill is technical in nature.

PURPOSE AND NEED

S. 744 would redress a serious inequity faced by good faith buyers of farm products. Section 9-307 of the Uniform Commercial Code, which has been adopted in 49 of the 50 states, provides that a commercial buyer of goods in the ordinary course of business takes free of any security interest created by the seller, even though the security interest is perfected and even though the buyer knows of its existence. (A security interest is a commercial lien on identified personal property that is created through the operation of the Uniform Commercial Code, as adopted by the States.) The sole exception to this general rule, also specified in section 9-307, applies to the purchase of farm products from persons engaged in farming operations. Under this exception, a lender could require payment from a buyer of agricultural commodities previously purchased, if the commodities were subject to a valid security interest, even if the buyer did not know that the security interest existed.

The so-called farm products exception has forced farm product buyers to search out all liens that may cover the farm products they buy. However, if a lien should go undiscovered or if the lien is recorded inaccurately, and the seller defaults on the loan, the good faith buyer can be forced to pay the lender for the products purchased previously—that is, to pay twice for the products that he purchased in good faith. In effect, the buyer of farm products becomes the involuntary guarantor of a loan about which he knew nothing, even though he had no input as to the advisability of the loan or the limit of the credit granted. In addition, the buyer receives no compensation to cover the risk exposure and jeopardy the buyer has involuntarily and unknowingly assumed.

Most purchasers of goods need not be unduly concerned about the finances of those with whom they do business. Shoppers need not worry about whether department stores have liens on their goods; nor must retailers check as to whether wholesalers have obligated their inventory. This is so because, if the seller has used his inventory as collateral for a loan and then defaults on the loan, the

lender may not legally recover payment from the third-party buyer.

The farm products exception has created unique problems for good faith buyers of mortgaged grain, cotton, livestock, poultry and other farm products. Customarily, the sale of farm products by persons engaged in farming operations is conducted on very short notice. For example, livestock ranchers usually sell their cattle at auction. This leaves little time for the purchaser to conduct a lien search on the cattle offered for sale.

This problem is exacerbated by the fact that most States require that the financing statements evidencing liens on the farm products, be filed only in the county where the products are located, or in the county of the debtor's residence. Thus, where there is no central filing location, the purchaser is required to perform a county-by-county lien search to assure that the products are free of liens.

The fast-paced nature of the livestock sales transactions, for example, makes such lien searches difficult. Consequently, purchasers must rely on the seller's representation that the livestock is not subject to a lien. Sometimes, however, the purchasers subsequently learn that the livestock was subject to a lien and find themselves liable to the secured party.

In addition, some lenders have pursued claims against buyers several years following the purchase in question, thus causing some buyers to limit those with whom they do business. This has had the effect of restricting farmers' markets and the free flow of commerce.

The problem also can adversely affect individual farmers, as well as the viability of their markets. Farmers buy products from other farmers, such as feeder cattle, pigs, breeding stock, grain, and hay, and the farmer-purchasers may also be forced by this legal anomaly to pay twice for the products if their suppliers default on secured debts.

The current law poses a basic question of equity. The Committee believes that a purchaser of farm products should not be required to pay a second time for those commodities because of a financial dispute between the producer/borrower and his lender.

Several States have taken legislative action to remedy this situation. However, each State's approach is somewhat different, with no clear consistency among them, leaving purchasers of goods shipped interstate subject to differing laws.

Eleven States have amended their version of section 9-307 of the Uniform Commercial Code to require that the buyer of farm products receive some form of actual written notice of the existence of a security interest covering the farm products. In addition, 17 States currently provide for central filing of security interests for some or all types of farm products. Many of these changes to the Uniform Commercial Code came about as the States addressed the complaints from the purchasers of farm products. Because of the nature of agricultural marketing, this State-by-State legal patchwork has become intolerable for both buyers and sellers of farm products. It has caused unwarranted confusion and great expense for those persons doing business in several States. A single Federal rule is needed to restore consistency to this area of the law.

The principal objectives of S. 744 are to correct the inequitable situation confronting buyers of agricultural commodities and to restore some level of uniformity in the treatment of liens filed on these commodities. The bill would extend the traditional protections contained in the Uniform Commercial Code, as adopted by the States, to the good-faith buyers of farm products in two ways. It would preempt the farm products exception language in the Uniform Commercial Code. It would also provide a simple mechanism under which lenders could choose to protect their security interests through actual notice to prospective buyers of the existence of the security interests.

The bill does not force the lenders to do anything if they do not see a need to protect their secured position. However, if they choose to protect their interests through notification of buyers, they may set up a system that most appropriately suits their own needs and business practices.

S. 744 does not prescribe the precise manner in which a lender must make notification, thus allowing lenders flexibility to establish a system that best meets their individual needs. The Committee intends to allow maximum flexibility to lenders and sellers to design a prenotification system most suited to individual needs and circumstances. This flexibility also extends to the various States to determine how best to implement a prenotification system.

For example, at the time a loan is made to a producer, the lender could seek and receive a list of potential purchasers of the mortgaged commodities from the producer, for purposes of notification. Once a buyer has received notice, the buyer would be obligated to follow what ever repayment instructions the lender feels are necessary to protect the loan.

If a producer sells the commodities covered by a security interest to a buyer who is not on the list of potential purchasers and fails to provide written notification to the lender at least 7 days prior to the sale, or fails to account to the secured party for the proceeds within 10 days of the sale, S. 744 provides that the producer will be subject to a fine of up to $5,000.

Under this provision, any off-list sale of farm products is not wrongful if the producer/seller promptly accounts to the lender for the proceeds of the sale. The term "accounted to" is used in a broad sense to permit the seller to settle with the secured lender through a cash payment, check, electronic transfer of funds, automatic account debt, or any other comparable payment or settlement technique that satisfies the security interest in the farm products that were sold. For example, after sale of farm products to an off-list buyer, the seller might endorse the buyer's check and transmit it to the secured party; or the seller might deposit the buyer's check in his account and then initiate an electronic transfer or debit of those funds to the secured party. The seller could also, with the secured party's assent, make arrangements for deferred payments, or even substitute other collateral for that which was sold.

The "clear title" provisions of the bill take effect 30 days after enactment and apply to all security interests created in farm products on or after that date. In addition, for security interests that are already in existence before the effective date, there is a grace

period of one year. During that period, the rights of the secured party and buyers of the collateral will continue to be controlled by existing law. Once that period has expired, however, the provisons in the bill will become the controlling law.

COMMITTEE CONSIDERATION

On August 1, 1985, the Committee on Agriculture, Nutrition, and Forestry met in markup on the 1985 farm bill. During this meeting, Senator Cochran proposed that the provisions of S. 744, with certain changes, be added to the Committee farm bill as an amendment.

In explaining his proposal, Senator Cochran pointed out that its purpose was to reform State law provisions dealing with liens on agricultural products, as these liens affect the purchaser of the products. He pointed out that approximately 21 States have altered the Uniform Commercial Code provisions dealing with the "farm products exception."

Senator Heflin pointed out that the development and adoption of the Uniform Commercial Code was a shining example of effort on the part of the States to adopt uniform laws affecting commercial transactions. He questioned whether Federal involvement was necessary in this area in view of the apparent willingness of the States to resolve these questions of commercial law.

Senator Cochran then pointed out that there is little unity on the "farm products exception", as it has been adopted by the States. He further pointed out that financing statements evidencing liens on farm products are filed in the county where the property is located in some States and with the Secretary of State in others. Consequently, some purchasers of farm products have been forced to pay twice for farm products that were subject to a lien of which the purchaser had no knowledge. Senators Melcher and Harkin also spoke in support of the Cochran amendment. The Committee then adopted the Cochran amendment by voice vote.

On September 18, 1985, the Committee (again meeting in markup on the 1985 farm bill), on the request of the Majority Leader, decided to remove the Cochran amendment from the farm bill and to report the amendment as a separate measure. This action was taken in order to facilitate consideration of the issues in the Cochran amendment by the Committee on Banking, Housing, and Urban Affairs. On September 19, 1985, the Committee ordered that S. 744 be reported, as amended, with the text of the Cochran amendment.

SECTION-BY-SECTION ANALYSIS

Definition of terms

Subsection (a) of the Committee amendment defines several terms used in this bill.

(1) The term "buyer in the ordinary course of business" means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations.

(2) The term "commission merchant" means any person engaged in the business of receiving any farm product for sale, on commission, or for or on behalf of another person.

(3) The term "farm product" means a crop or livestock used or produced in farming operations, or a product of a crop or livestock in its unmanufactured state (such as ginned cotton, wool-clip, maple syrup, milk and eggs), that is the possession of a person engaged in farming operations.

(4) The term "knows" or "knowledge" means actual knowledge.

(5) The term "security interest" means an interest in farm products that secures payment or performance of an obligation.

(6) The term "selling agent" means any person, other than a commission merchant, who is engaged in the business of negotiating the sale and purchase of any farm product on behalf of a person engaged in farming operations.

(7) The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Preemption of farm products exception

Subsection (b) of the bill preempts any other provision of Federal, State, or local law to provide that a buyer who, in the ordinary course of business, buys a farm product from a seller engaged in farming operations will take free of a security interest created by the seller, even though the security interest is perfected and the buyer knows of its existence.

Exception to preemption of the farm products exception

Subsection (c) of the bill provides that a buyer of farm products takes his interest in these products subject to a security interest created by the seller if—

(1) within 12 months prior to the sale of the farm products, the buyer has received from the secured party or the seller written notice of—

(A) the security interest, including—

(i) the name and address of the secured party and the seller; and

(ii) a reasonable description of the property, including the jurisdiction in whch the property is located; and

(B) any payment obligation imposed on the buyer by the secured party as a condition for waiving or releasing the security interest; and

(2) the buyer has failed to perform the payment obligation.

Commission merchants and selling agents

Subsection (d) of the bill provides that a commission merchant or selling agent who, in the ordinary course of business, sells a farm product for another person will not be liable to the holder of a security interest in the farm product, even though the security interest is perfected and the commission merchant or selling agent knew of its existence.

Terms of security agreement

Subsection (e) of the bill provides that:

(1) A security agreement creating a security interest in a farm product may require the person who produces the product to furnish to the secured party a list of the buyers to whom the person may sell the product.

(2) If a security agreement requires the person producing the farm product to furnish a list of the buyers to whom the product may be sold and the farm product is not sold to one of the buyers listed, the person producing and selling the farm product must—

(A) notify the secured party in writing of the identity of the prospective buyer at least 7 days prior to the sale, or

(B) account to the secured party for the proceeds of the sale not later than 10 days after the sale.

(3) Any person producing a farm product who sells such product to an unlisted buyer and who does not comply with the provisions of paragraph (2)(A) or (2)(B) may be fined up to $5,000.

Effective date

Subsection (f) of the bill provides that the provisions of the bill will be effective 30 days after the date of enactment, except that any security interest that attaches prior to the effective date of the bill will be exempt from the bill's provisions for a period of 1 year.

ADMINISTRATION VIEWS

On September 19, 1985, the Secretary of Agriculture wrote a letter to Chairman Helms setting forth the Administration's position supporting enactment of S. 744, as amended. That letter is as follows:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, September 19, 1985.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter is in response to Senator Cochran's request for the Department of Agriculture's views on S. 744, a bill "To amend the Food and Agriculture Act of 1981 to provide protection for agricultural purchasers of farm products." In the Senate, S. 744 has been incorporated into S. 616, "The Agriculture, Food, Trade, and Conservation Act of 1985."

The Department supports this provision to provide protection for purchasers of farm products. This provision supersedes the farm products exemption of Section 9-307 of the Uniform Commercial Code, provides protection to commission merchants or selling agents and provides a pre-notification mechanism under which lenders may choose to protect their security interests in products sold in the ordinary course of business.

The Department favors this legislative solution because it will:

treat farm products equally with all other products in this country;

allow consistency among and between States;

remove obstructions to free trade and orderly marketing, and

remove "double payment" risk from purchasers of farm products.

Section 9-307 of the Uniform Commercial Code provides: "A buyer in the ordinary course of business, *other than a person buying farm products from a person engaged in farming operations*, takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence." (Emphasis added.) Ordinarily, purchasers do not need to consider whether security interests cover the goods they purchase from inventory. Shoppers do not need to worry whether a department store has liens on its goods, nor do retailers need to check whether wholesalers have encumbered their equipment. Even if buyers know the goods they purchase are collateral for an inventory loan, they take free of any security interest. Only agricultural buyers run the risk of having to pay twice for their purchases, even if they do not have actual knowledge about the existence of a lien.

The following brief discussion describes the unique problem that arises due to the farm products exemption. Customarily, the sale of farm products by persons engaged in farming operations is conducted on very short notice. For example, livestock ranchers usually sell their cattle at auction. This leaves little time for the auctioneer or the purchaser to conduct a lien search on the cattle offered for sale. This problem is exacerbated by the fact that most States require filing of financial statements covering farm products only in the county of the products' locale, or in the county of the debtor's residence. Thus, because there is no central filing location, the auctioneer or the purchaser would be required to perform a county-by-county lien search to assure that the products are free of liens. The fast-paced nature of the transaction makes such lien searches practically impossible; thus actioneers and purchasers must rely on the seller's representations that the livestock is not subject to a security interest. Sometimes, however, the auctioneers and purchasers subsequently learn that the livestock was encumbered and find themselves liable to the secured party.

If a seller/debtor defaults on the loan, or fails to account for the proceeds, the purchaser can be forced to pay twice for the goods, once at the time of the sale and again months or years later when the lender sues the purchaser or commission merchant for conversion of collateral. Recourse against the original seller frequently is unavailable. This problem is especially troublesome for buyers of livestock since the Packers and Stockyards Act [7 USC 228b(a)] requires cash buyers of livestock to pay for their purchases within one day of the sale transaction.

As a result, several States have taken legislative action to remedy this situation. However, each approach is somewhat different with no clear consistency among States, leaving purchasers of goods shipped interstate subject to different laws.

The Uniform Commercial Code exists as the outstanding example of interstate cooperation, without involvement of the Federal Government. The Reagan Administration maintains a high regard for the concept of federalism, and actions pre-empting the authority of the States should be weighed with utmost care.

Furthermore, it is the Department's desire to act in harmony with the State law system to the maximum extent feasible, but with the recognition that State action alone is insufficient to satisfactorily resolve a national problem directly affecting interstate commerce. The effect of the bill is only to treat farm products in the same manner as any other inventory under the Uniform Commercial Code and to relieve commission merchants and selling agents of liability.

The interests of creditors must be protected, both in the interest of equity and to assure the availability of agricultural financing. Both private and Government lenders are rightfully concerned that their security interest be protected.

Therefore, the legislation's proposed mechanism for lien notification provides an opportunity to the lender to choose to preserve the security interest in farm products. The legislation does not prescribe the precise manner in which a lender must provide notification, thus allowing lenders flexibility to establish systems which best meet their individual needs. The clear title proposal, as it currently appears in the Farm Bill, equitably resolves the problems of agricultural lenders, borrowers and product purchasers.

The Department is in the position to understand all concerns that arise due to the farm products exemption from the Uniform Commercial Code. It not only represents the agricultural community, but also is an agricultural lender and regulates certain commission merchants.

We have evaluated the effects on USDA's lending programs, and it appears that the bill would have little, if any, impact. Conversions of the USDA's collateral are relatively infrequent. The cost of litigation to recover from third parties is almost as much as the amount recovered. The best protection for USDA's collateral is, as responsible lenders, to supervise its borrowers.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

An identical letter has been sent to Senator Thad Cochran.

Sincerely,

JOHN R. BLOCK, *Secretary.*

COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that no significant cost will be incurred by the Federal Government as a result of the enactment of S. 744.

The cost estimate prepared by the Congressional Budget Office is consistent with the Committee's estimate. The letter to Chairman Helms submitting that cost estimate reads as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1985.

Hon. JESSE A. HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 744, a bill to provide protection for buyers of farm products, as ordered reported by the Committee on Agriculture, Nutrition, and Forestry, September 19, 1985. We estimate that this bill would result in no cost to the federal government, or to state and local governments.

Currently, if a lien exists on farm products, a buyer who may not have been made aware of the lien can be legally forced to pay the lender. The Uniform Commercial Code allows buyers of products, other than buyers of farm products, to take goods free of a security interest created by the seller, even though the buyer knows of its existence. The bill would extend these protections to buyers of farm products.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM
(for Rudolph G. Penner, Director).

REGULATORY IMPACT EVALUATION

This legislation will have a direct impact on the myriad of agricultural transactions which take place among the Nation's 2.3 million farmers. It will also affect thousands of daily transactions between these farmers and representatives of industries such as seed production, meat packing and processing, grain processing, and poultry processing.

In addition to producers and purchasers, agricultural lenders will be significantly affected by the enactment of this legislation. Generally, the type of lending most affected by S. 744 will be short term operating credit. Loans for short term operating credit are often secured by liens on agricultural products, rather than the real estate that provides collateral for long term loans.

Recent surveys indicate that there are approximately 7,800 commerical banks with 10 or more agricultural loans in their portfolios. These banks provide approximately 37 percent of all short term operating credit to agricultural producers. The Farmers Home Administration, an agency of the U.S. Department of Agriculture, provides approximately 15 percent of all short term operating credit to farm operations, and the Commodity Credit Corporation, also an entity of the U.S. Department of Agriculture, extends approximately 10 percent of this credit. The Farm Credit System, through the Federal Intermediate Credit Banks and Production Credit Associations, provides approximately 19 percent of the short term operating credit, while individuals and others provide the remainder of this credit to farmers, or approximately 18 percent of the total.

There are millions of transactions involving the purchase of agricultural products annually. Enactment of this legislation will relieve the purchasers of these agricultural products from the uncertainties in current law.

Agricultural lending practices may also be affected, to the extent that lenders become more cautious in offering credit to farmers who have little or no collateral, other than agricultural products, for their loans.

MINORITY VIEWS OF SENATOR HEFLIN

S. 744 provides for federal preemption of the "farm products exception" of the Uniform Commercial Code, UCC 9-307(1) (1977). The UCC is a model state law enacted by every state except Louisiana. The "farm products exception" is currently the law in the vast majority of jurisdictions. Thirty-eight states currently have either the UCC official text of 9-307(1) or its functional equivalent. Eleven states have altered the notice provisions involved. But only two states, California and Tennessee, have eliminated the "farm products exception", and Tennessee's deletion is limited.

The regulation of commercial transactions has traditionally been the province of the states. One of the primary purposes in enacting the Uniform Commercial Code was to assure that the states retain control of regulating the basic commercial law of the country while fostering uniformity. Repeal of the "farm products exception" would certainly not further this goal.

The UCC was designed to be state enacted, to allow for local variations addressing the concerns of each individual state while following the basic guidelines of the UCC. The states currently regulate the vast majority of commercial and business transactions through their versions of the UCC which they are free to alter to fit their particular circumstances. Congress need not interfere with that regulation. Not all provisions of the UCC are identical in every state. If total uniformity is desirable, then Congress should not consider piecemeal preemption of various sections. Deletion of one provision will not accomplish uniformity. A review of the adverse effects of state variation of the UCC should be complete and should begin with the Permanent Editorial Board of the UCC. It is for the Board to study the problems inherent in the system and on the basis of its findings, to make recommendations as to whether particular provisions such as the "farm products exception" are in need of revision. The Board reviewed the "farm products exception" as recently as 1978 and decided at that time that its retention was necessary.

The problems in the agricultural area extend beyond Section 9-307(1). The troubles faced by those involved in agriculture financing today are complex. They warrant careful examination and study. Precipitous elimination of the "farm products exception" by S. 744 is inimical to a thorough review of the agricultural financing system as a whole. Enactment of S. 744 exacerbates the problems in agriculture and agricultural financing.

The problems arising in the area of agricultural secured lending, no less than in other areas of commercial transactions, are best handled at the state level through traditional means of state regulation. States are free to tailor the UCC to their particular needs and many states have reviewed and adopted versions of the "farm products exception" which are satisfactory to them.

States should be able to retain their right to adopt and modify the UCC. S. 744 preempts that right and sets an undesirable federal precedent. S. 744 clearly frustrates the right of states to regulate their business and commercial transactions, and for this reason, I oppose its enactment.

HOWELL HEFLIN.

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Calendar No. 351

99TH CONGRESS
1st Session

SENATE

REPORT
99-160

EXTENSION OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

OCTOBER 21, 1985.—Ordered to be printed

Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

[To accompany S. 1776]

The Committee on Agriculture, Nutrition, and Forestry reports an original bill (S. 1776) to extend the authorization for appropriations for the Federal Insecticide, Fungicide, and Rodenticide Act, and recommends that the bill do pass.

SHORT EXPLANATION

The bill would extend the authorization for appropriations to carry out the Federal pesticide program under the Federal Insecticide, Fungicide, and Rodenticide Act through September 30, 1987. The bill would authorize appropriations of $57,067,300 for fiscal year 1986 and such sums as may be necessary for fiscal year 1987.

PURPOSE AND NEED

I.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates the manufacture and use of pesticides in the United States. The Environmental Protection Agency (EPA) implements FIFRA through its pesticide program.

There are four primary elements to EPA's pesticide program under FIFRA: (1) review and registration of existing and new pesticide products; (2) pesticide use management; (3) enforcement; and (4) research and development.

Review and registration

New pesticide products are registered upon a finding that they will not cause unreasonable adverse effects on humans or the envi-

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ronment, taking into consideration economic and social costs and benefits and the health and environmental risks stemming from the use of the pesticides. In addition, all products registered prior to the promulgation of regulations under the Federal Environmental Pesticide Control Act of 1972 (which substantially amended FIFRA) must be reviewed again and reregistered. EPA has made progress in establishing the registration standards program necessary to complete the reregistration process. EPA issues registration standards on generic chemical ingredients, not individual end-use products; thus about 600 registration standards will eventually be needed. To date, 115 registration standards have been issued, and about 25 per year are planned. Over the next several years the agency will be evaluating large amounts of scientific data submitted in response to registration standards and will be conducting the process of reregistering the thousands of individual products involved in the program.

FIFRA further requires that all proposed and final regulations be submitted to the Scientific Advisory Panel for comment as to their impact on health and the environment. The Panel is composed of 7 members appointed by the Administrator of the Environmental Protection Agency from 12 nominees—6 nominated by the National Science Foundation and 6 by the National Institutes of Health. Since it was first established in 1976, this Panel has played an active and important role in providing objective and scientifically rigorous evaluations of the health and environmental implications of any agency actions proposed under FIFRA.

Pesticide use management

Pesticides are classified, based on their potential for causing harm, for either restricted or general use. Only trained and certified applicators may apply pesticides designated for restricted use. The training and certification of applicators, private and commercial, are performed by State governments (with Federal financial assistance) in all but two States. EPA operates the certification and training programs in those two States.

Enforcement

The enforcement segment of the pesticide program regulates pesticide supply and use. Almost all States have primary use enforcement authority through cooperative Federal-State enforcement agreements and grants. The Federal program is now focusing on ensuring industry compliance with the registration, classification, and labeling requirements of FIFRA, and oversight of State activities under the agreements.

Research and development

Research under the pesticide program is conducted in three areas: (1) identification of the population at risk from exposure to pesticides; (2) assessment of individual exposure; and (3) determination of adverse effects.

A primary concern of EPA is exposure assessment because there is little information available on this topic. Exposure assessment research covers the development of protocols to determine occupational exposure to pesticides through their use, general population

exposure through all media, and exposure of nontarget fish and wildlife. Although some research protocols have now been developed, substantially more research in this area is needed.

II.

The Federal pesticide program is funded by annual appropriations authorized under section 31 of FIFRA. Additional legislation is needed to extend the authorization for appropriations. This legislation meets the needs by amending section 31 of FIFRA to add a new authorization for appropriations to cover fiscal years 1986 and 1987.

The bill does not extend the authorization for FIFRA appropriations beyond fiscal year 1987. Although much progress has been made, EPA is continuing to implement the substantial amendments to FIFRA made by the Federal Pesticide Act of 1978. In light of continuing concern that the programs and regulations being developed by EPA effectively implement the 1978 amendments, it is important that Congress thoroughly review EPA's implementation effort prior to authorizing appropriations for subsequent fiscal years.

The amount that would be authorized under this legislation would be $57,067,300 for fiscal year 1986 and such sums as may be necessary for fiscal year 1987.

While the EPA has spent the last 2 years implementing a number of administrative changes in the pesticide program, there are clearly areas where revisions of current FIFRA language need to be considered. The EPA has sought the advice of various groups on ways that the administration of FIFRA can be changed to permit it to carry out its responsibilities for public and environmental protection more effectively. A number of outside environmental and industry groups have met to discuss FIFRA matters and to obtain a consensus on possible legislative changes to FIFRA. At this moment, the 100 members of the National Agricultural Chemicals Association and 42 consumer, environmental, and labor organizations have reached a consensus agreement for 10 amendments to FIFRA. The Committee commends this action and intends to review this agreement as soon as possible. But the Committee also recognizes that any review of FIFRA will likely be a difficult process that simply cannot be completed prior to the expiration of FIFRA.

The bill provides for a simple 2-year reauthorization of appropriations in order to assure effective pesticide regulation while the Committee reviews the recommendations for changes to FIFRA.

Committee Consideration

In anticipation of a full schedule of hearings concerning the 1985 farm bill, the Committee held a hearing during the 98th Congress to consider reauthorization of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Reauthorization of FIFRA was considered subsequently during markup of the 1985 farm bill. On September 19, 1985, the Committee agreed by voice vote to report an original bill extending the authorization for appropriations for FIFRA through fiscal year 1987.

ADMINISTRATION VIEWS

On March 27, 1985, the Administrator of the United States Environmental Protection Agency wrote a letter to the President of the Senate enclosing a bill to amend and extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for 2 years and setting forth the Administration's position supporting such an extension. That letter is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, March 27, 1985.

Hon. GEORGE BUSH,
President of the Senate, Washington, DC.

DEAR MR. PRESIDENT: Enclosed is the Environmental Protection Agency's proposed bill "To amend and extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for two years."

This bill would amend Section 31 of the Act to extend the Environmental Protection Agency's appropriation authorities through fiscal year 1987. These authorities expired on September 30, 1984.

This extension is suggested to enable the Environmental Protection Agency to continue the non-research programs envisioned by the Federal Insecticide, Fungicide and Rodenticide Act. We have requested extension of related research and development appropriation authorities in another draft bill, "The Environmental Research, Development and Demonstration Authorization Act of 1985." The enclosed draft bill provides appropriation authorization for our non-research activities under the Act, including developing and processing registration standards for pesticide ingredients; reviewing and registering new pesticide products; classifying pesticide products for general or restricted use; establishing a minimum level of pesticide residue tolerances for food and feed commodities; assistance to State pesticide regulatory agencies for enforcement and for training and certification of pesticide applicators, and funds for basic operating expenses and salaries.

We recommend that this proposal be referred to the appropriate Committee and that it be enacted.

Our request for appropriation authorization for fiscal year 1986 under the Federal Insecticide, Fungicide, and Rodenticide Act is $57,067,300. This is the amount requested in the President's 1986 Budget for these activities.

This bill is submitted as an aid to the Congressional Budget process and does not include any proposal for substantive changes to the Act. The Agency is actively considering substantive amendments, which will be submitted to Congress as soon as they are developed and cleared within the Administration. I want to reaffirm our continuing willingness to assist the Congress as you proceed to consider substantive amendments to the Federal Insecticide, Fungicide, and Rodenticide Act.

The Office of Management and Budget advises that enactment of this legislative proposal would be in accord with the program of the President.

Sincerely,

LEE M. THOMAS, *Administrator.*

Enclosure.

Cost Estimate

I.

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates the cost of carrying out the bill as follows:

Estimated outlays for fiscal year:

	Millions
1986	$39.0
1987	54.1
1988	17.4
1989	4.6
1990	1.3

II.

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 9, 1985.

Hon. Jesse A. Helms,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for a bill to extend the authorization for appropriations for the Federal Insecticide, Fungicide, and Rodenticide Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner, *Director.*

Congressional Budget Office—Cost Estimate

October 9, 1985.

1. Bill number: Not yet assigned.

2. Bill title: A bill to extend the authorization for appropriations for the Federal Insecticide, Fungicide, and Rodenticide Act.

3. Bill status: As ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry, September 19, 1985.

4. Bill purpose: This bill would authorize fiscal year 1986 appropriations of $57.067 million to the Environmental Protection Agency for programs carried out under the Federal Insecticide, Fungicide, and Rodenticide Act. The bill would authorize such sums as may be necessary for these programs in fiscal year 1987.

5. Estimated cost to the Federal Government:

[In millions of dollars]

	Fiscal years				
	1986	1987	1988	1989	1990
Estimated authorization level	57.1	59.9			
Estimated outlays	39.0	54.1	17.4	4.6	1.3

Note: The costs of this bill fall within budget function 300.

Basis of Estimate: The 1986 authorization is that stated in the bill. Authorizations for 1987 have been estimated on the basis of CBO baseline economic assumptions. For the purposes of this estimate, it has been assumed that the full amounts authorized will be appropriated for each fiscal year. Outlays have been estimated based historical spending patterns.

6. Estimated cost to State and local governments: None.

7. Estimate comparsion: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols (James L. Blum, Assistant Director for Budget Analysis).

Regulatory Impact Evaluation

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would be incurred in carrying out the Committee bill.

The bill authorizes $57,067,300 for fiscal year 1986 and such sums as may be necessary for fiscal year 1987 to carry out the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The bill is a simple extension of the current Act.

The current appropriation level stands at $57.2 million. The authorization levels contained in this legislation are not estimated to dramatically change current personnel requirements or adminstrative responsibilities for the Envirnomental Protection Agency. An estimated 701.9 fill time staff equivalents are required to carry out the present Act.

The regulatory action carried out under FIFRA directly impacts upon the companies that develop, produce, and formulate pesticides. The producing industry employs approximately 15,000 people in the production of up to 1,400 different chemical active ingredients. Total production is valued at $6 billion annually. Given that this legislation is a simple extension of the current law, it is not estimated to change the regulatory impact to this industry beyond that of current pesticide laws that are carried out under FIFRA.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

AN ACT To regulate the marketing of economic poisons and devices, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act".

* * * * * * *

[SEC. 31. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1975, shall be the sums hereafter provided by law. There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning July 1, 1975, and ending September 30, 1975, the sum of $11,967,000. There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending November 15, 1975, the sum of $5,983,500. There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975 and ending September 30, 1976, the sum of $47,868,000, and for the period beginning October 1, 1976, and ending September 30, 1977, the sum of $46,636,000, and for the period beginning October 1, 1977, and ending September 30, 1978, the sum of $54,500,000, and for the period beginning October 1, 1978, and ending September 30, 1979, such sums as may be necessary, but not in excess of $70,000,000. There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1979, and ending September 30, 1980, such sums as may be necessary, but not in excess of $72,160,000 and for the period beginning October 1, 1980, and ending September 30, 1981, such sums as may be necessary, but not in excess of $77,500,000. There are thereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1983, and ending September 30, 1984, such sums as may be necessary, but not in excess of $64,200,000.]

SEC. 31. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act for the period beginning October 1, 1985, and ending September 30, 1986, $57,067,300, and for the period beginning October 1, 1986, and ending September 30, 1987, such sums as may be necessary.

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